



## RESOLUTION

APPROVING FOR INCLUSION IN THE 2005 HSAC LEGISLATIVE PACKAGE A PROPOSAL TO EXPRESSLY IMPOSE THE PUBLIC SERVICE COMPANY TAX ON THE GROSS INCOME OF EACH PRIVATE SEWER COMPANY AND PRIVATE SEWER FACILITY.

WHEREAS, Chapter 239, Hawaii Revised Statutes (HRS), establishes two alternative formulas for the imposition of the State public service company tax upon a public utility; and

WHEREAS, under one alternative, the public service company tax is imposed at the four percent rate on the gross income of a public utility, and the proceeds are realized by the State in lieu of the State general excise tax; and

WHEREAS, the second alternative becomes operative if a county exempts the real property of a public utility from the real property tax; and

WHEREAS, if the county enacts such an exemption by ordinance, the public service company tax is imposed at a minimum 5.885 percent rate on the gross income of each public utility operating within the boundaries of that county, and:

- (1) The portion of the proceeds representing a four percent rate is realized by the State as a substitute for the State general excise tax; and
- (2) The portion of the proceeds in excess of the four percent rate is transmitted to the county as a substitute for the county real property tax; and

WHEREAS, every county of the State has chosen to (1) exempt public utilities operating within the boundaries of the county from the real property tax and (2) receive instead a share of the public service company tax proceeds pursuant to the second alternative; and

WHEREAS, the State Department of Taxation had imposed the public service company tax on every private sewer company and facility because they are considered to be "public utilities" under Section 269-1, HRS, which is part of the State public utility regulation law, and Chapter 239, HRS; and



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WHEREAS, the Tax Appeal Court, however, has recently rendered a decision finding that the gross income of a particular private sewer is taxable under the general excise tax instead of the public service company tax (See In the Matter of the Tax Appeal of Director of Taxation, State of Hawaii, Tax Appeal Court, Case No. 02-0067, judgment entered August 19, 2004); and

WHEREAS, the Court's decision rests on an omission of express language in Chapter 239, HRS, that the public service company tax is to be imposed on the gross income derived from the operation of a private sewer company; and

WHEREAS, the State Director of Taxation has not appealed the decision; and

WHEREAS, one effect of the decision is to stop the counties from receiving a share of the public service company tax proceeds derived from a private sewer company or facility; and

WHEREAS, to rectify the situation, the Council finds that the State law should be amended to expressly provide that the gross income derived from the operation of a private sewer company or private sewer facility is subject to the public service company tax; and

WHEREAS, the amendment will enable a county to again receive a share of the public service company tax proceeds from every private sewer company and facility if the county continues to exempt them from the real property tax; and

WHEREAS, the Council finds that, from an administrative standpoint, the receipt of a share of the public service company tax proceeds is preferable to the imposition of the real property tax on a private sewer company or facility; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that this body approves for inclusion in the 2005 HSAC Legislative Package a proposal, attached as Exhibit A, to expressly impose the public service company tax upon the gross income of each private sewer company or private sewer facility; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 05-009

**RESOLUTION**

BE IT FINALLY RESOLVED that the Clerk is directed to transmit a certified copy of this Resolution to the President of the Hawaii State Association of Counties.

INTRODUCED BY:

Penny M. Loh (CB/R)

DATE OF INTRODUCTION:

January 07, 2005  
Honolulu, Hawaii

Councilmembers

## **EXHIBIT A**

\_\_\_\_.B. NO. \_\_\_\_\_

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# A BILL FOR AN ACT

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RELATING TO THE PUBLIC SERVICE COMPANY TAX.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The purpose of this Act is to expressly levy and assess the public  
2       service company tax upon the gross income derived from the operation of a private  
3       sewer company or private sewer facility. The Legislature intends that this Act  
4       supersede the Tax Appeal Court's decision, In the Matter of the Tax Appeal of the  
5       Director of Taxation, State of Hawaii v. Laie Treatment Works, Inc., Tax Appeal Court,  
6       Case No. 02-0067. The Legislature further intends that a "private sewer company" or  
7       "private sewer facility" be a company or facility that is deemed a "public utility" under  
8       paragraph (1) of the definition of that term in section 269-1, Hawaii Revised Statutes.

9       SECTION 2. Section 239-2, Hawaii Revised Statutes, is amended by amending  
10      the definition of "gross income" to read as follows:

11        "Gross income" means the gross income from public service company business  
12      as follows:

- 13        (1)   Gross income from the production, conveyance, transmission, delivery, or  
14              furnishing of light, power, heat, cold, water, gas, or oil;
- 15        (2)   Gross income from the transportation of passengers or freight, or the  
16              conveyance or transmission of telephone or telegraph messages other

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1 than mobile telecommunications services, or the furnishing of facilities for  
2 the transmission of intelligence by electricity, by land or water or air:

3 (A) Originating and terminating within the State;

4 (B) By means of vessels or aircraft having their home port in the State  
5 and operating between ports or airports in the State, with respect to  
6 the transportation so effected; or

7 (C) By means of plant or equipment located in the State, between  
8 points in the State; or

9 (3) Gross income from the transportation of freight by motor carriers (other  
10 than as stated in paragraph (2)), or the conveyance or transmission of  
11 messages or intelligence through wires or cables located or partly located  
12 in the State (other than as stated in paragraph (2) or ~~[(4)]; or~~ (5));

13 (4) Gross income from the operation of a private sewer company or private  
14 sewer facility; or

15 ~~[(4)]~~ (5) With respect to a home service provider of mobile telecommunications  
16 services, "gross income" includes charges billed for mobile  
17 telecommunications services provided by a home service provider to a  
18 customer with a place of primary use in this State when the mobile  
19 telecommunications services originate and terminate within the same  
20 state; provided that all such charges for mobile telecommunications  
21 services that are billed by or for the home service provider are deemed to

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1 be provided by the home service provider at the customer's place of  
2 primary use, regardless of where the mobile telecommunications services  
3 originate, terminate, or pass through. Gross income shall not include:

4 (A) Any charges for or receipts from mobile telecommunications  
5 services provided to customers of the home service provider whose  
6 place of primary use is outside the State;

7 (B) Any receipts of a home service provider acting as a serving carrier  
8 providing mobile telecommunications services to another home  
9 service provider's customer; and

10 (C) Any receipts specifically from interstate or foreign mobile  
11 telecommunications services taxable under Section 237-13(6)(E),  
12 as determined by the home service provider's books and records  
13 kept in the ordinary course of business.

14 For the purposes of this paragraph, "customer", "home service provider",  
15 "mobile telecommunications services", "place of primary use", and "serving  
16 carrier" have the same meaning as in section 239-22.

17 The words "gross income" and "gross income from public service company  
18 business" shall not be construed to include dividends (as defined by section 235-1) paid  
19 by one member of an affiliated public service company group to another member of the  
20 same group; or gross income from the sale or transfer of materials or supplies, interest  
21 on loans, or the provision of engineering, construction, maintenance, or managerial

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1 services by one member of an affiliated public service company group to another  
2 member of the same group. "Affiliated public service company group" means an  
3 affiliated group of domestic corporations within the meaning of chapter 235, all of the  
4 members of which are public service companies. "Member of an affiliated public service  
5 company group" means a corporation (including the parent corporation) which is  
6 included within an affiliated public service company group.

7 Where the transportation of passengers or property is furnished through  
8 arrangements between motor carriers, and the gross income is divided between the  
9 motor carriers, any tax imposed by this chapter shall apply to each motor carrier with  
10 respect to each motor ~~[carriers']~~ carrier's respective portion of the proceeds.

11 Where tourism related services are furnished through arrangements made by a  
12 travel agency or tour packager and the gross income is divided between the provider of  
13 the services on the one hand and the travel agency or tour packager on the other hand,  
14 any tax imposed by this chapter shall apply to each person with respect to each  
15 person's respective portion of the proceeds.

16 Accounts found to be worthless and actually charged off for income tax  
17 purposes, at corresponding periods, may be deducted from gross income as specified  
18 under this chapter so far as they reflect taxable sales, but shall be added to gross  
19 income when and if subsequently collected.

20 As used in this paragraph "tourism related services" means motor carriers of  
21 passengers regulated by the public utilities commission."



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1           SECTION 3. This Act shall apply to gross income derived from operation as a  
2 private sewer company or private sewer facility that is accrued from July 1, 2005.

3           SECTION 4. Statutory material to be repealed is bracketed and struck through.  
4 New material is underscored.

5           SECTION 5. This Act shall take effect on July 1, 2005.

6                           INTRODUCED BY: \_\_\_\_\_

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CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

**RESOLUTION 05-009**

Introduced: 1/7/05 By: ROMY CACHOLA (BY REQUEST)

Committee: EM

Title: APPROVING FOR INCLUSION IN THE 2005 HSAC LEGISLATIVE PACKAGE A PROPOSAL TO EXPRESSLY IMPOSE THE PUBLIC SERVICE COMPANY TAX ON THE GROSS INCOME OF EACH PRIVATE SEWER COMPANY AND PRIVATE SEWER FACILITY.

Links: RES. 05-009

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Executive Matters	1/13/05	CR-36 – Resolution reported out of committee for adoption.
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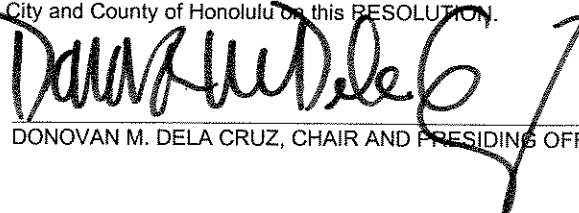
Council	1/26/05	Resolution and CR-36 adopted.
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Apo.....	Y	Cachola .....	Y	Dela Cruz...	Y	Djou .....	N	Garcia .....	Y
Kobayashi ...	Y	Marshall.....	Y	Okino .....	Y	Tam .....	Y		

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
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DENISE C. DE COSTA, CITY CLERK

  
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DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER